

GREAT BASINS PETROLEUM CO.

IBLA 78-165

Decided June 30, 1978

Appeal from decision of the Colorado State Office, Bureau of Land Management, dated December 5, 1977, holding oil and gas lease C 9497 terminated by operation of law, and denying approval to an assignment of same.

Affirmed.

1. Oil and Gas Leases: Termination

Absent an affirmative billing error by BLM, a Federal oil and gas lessee is entitled to a Notice of Deficiency in regard to advance rental only where such lessee has made timely payment of the lease rental and the payment tendered is deficient by not more than \$10 or 5 percent of the total amount due, whichever is greater.

2. Oil and Gas Leases: Termination

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

3. Oil and Gas Leases: Termination

A purported assignment of an oil and gas lease does not relieve the lessee of record of the responsibility to make timely payment of all rentals until such assignment is formally approved by BLM.

APPEARANCES: George H. Hunker, Jr., Hunker-Fedric, Attorneys, Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Great Basins Petroleum Co. appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), declaring oil and gas lease C 9497 terminated by operation of law and denying a request for an assignment of an undivided fractional interest in that lease to appellant.

At all times relevant to this appeal, record title to lease C 9497 was held in equal 25 percent shares by Raymond Chorney, Pacific Transmission Supply Co., New Albion Resources Co., and Mono Power Co. By BLM decision of April 9, 1973, the above-named lessees were given notice of an increase in rental rate from \$0.50 to \$2.00 an acre due to the fact that part of the leased land had been classified as being within the Banta Ridge known geologic structure (KGS). Rental at the increased rate was paid for the lease years beginning in 1973 through 1976, but rental for the year beginning October 1, 1977, was paid at the rate of only \$0.50 an acre, leaving a deficit of \$3,045 for that year.

In its Statement of Reasons for Appeal, Great Basins Petroleum Co. avers that Raymond Chorney, by assignment dated March 9, 1977, assigned his 25 percent interest in the subject lease to Great Basins. Great Basins states that this assignment, along with 60 other such assignments, was sent to BLM for approval accompanied by a request that all future notices of rental due be sent to Great Basins inasmuch as Great Basins had assumed responsibility for making such payments. A courtesy billing for the 1977 rental of \$4,060 was sent by BLM to New Albion Resources Co. but New Albion failed to forward the notice to Great Basins. As a result, Great Basins, relying on the terms of the original lease, issued a rental check for \$1,015, an amount calculated at the \$0.50 per acre rental rate which had been in effect prior to the inclusion of the leasehold in a KGS area. On September 30, 1977, BLM issued a receipt to New Albion for the \$1,015 payment and pointed out that \$3,045 was still owing on the rental due October 1, 1977. New Albion forwarded this notice to Raymond Chorney, Great Basins' purported assignor, who, in turn, forwarded the notice to Great Basins. Receiving the notice sometime after November 3, 1977, Great Basins issued its check for the deficiency on November 21, 1977. This check was received by BLM on November 23, 1977, some 54 days after it was due.

On appeal, Great Basins argues that "it or one of the other interested parties was entitled as a matter of law to a Notice of Deficiency" and points out that it "stands ready to pay all rentals within a period prescribed in a Notice of Deficiency." Such a notice, appellant argues, should have been sent to it since it tendered the \$1,015 rental check and advised BLM of its intention to pay the rental on the subject leasehold some time in advance of the rental due

date. These contentions, while superficially persuasive, are without legal merit.

[1] The Mineral Leasing Act of 1920, provides that : "[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law * * *." 30 U.S.C. § 188(b) (1970), as amended. The language of this section is tempered somewhat by an exception to the automatic termination provisions applicable where a timely but deficient payment has been tendered by the lessee, and the deficiency is in an amount not more than \$10 or 5 percent of the total amount due, or results from an affirmative billing error rendered by an authorized BLM officer. Under these circumstances a Notice of Deficiency, such as that which appellant claims should have been issued to it, will be sent to the lessee, and an additional specified period will be allowed for the lessee to pay the deficiency. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(b). Appellant's payment, which was deficient by \$3,045, or 75 percent of the rental due, does not fall within the scope of this exception, and thus its lease terminated by operation of law on October 3, 1977, the first business day after the anniversary date of the lease. Amoco Production Company, 16 IBLA 215 (1974). See also, Rijan Oil Company, 4 IBLA 153, 78 I.D. 359 (1971). Appellant thus was not entitled to any Notice of Deficiency prior to the automatic termination of its lease. 43 CFR 3108.2-1(b); Amoco, supra.

[2] Appellant's reliance on receipt of a courtesy billing notice from the Bureau of Land Management, like its reliance on a Notice of Deficiency, is without legal basis. As we held in Richard C. Corbyn, 32 IBLA 296 (1977), the fact that a lessee did not receive a courtesy notice can neither prevent the lease from terminating nor serve to justify a failure to timely pay the lease rental. This Department, moreover, is under no obligation to provide such notices, and they are, in no sense, "bills" in the common understanding of that word. Louis J. Patla, 10 IBLA 127 (1973).

[3] Appellant's final argument, that the subject lease should be reinstated due to the failure of BLM to make a "timely approval of the assignment to Great Basins," is also without merit. Appellant complains that the BLM rental receipt showing a balance due on the lease should have been sent to it rather than to New Albion which appellant characterizes as a "stranger to the [lease rental] transaction," when, in fact, it is Great Basins which has at all times been the "stranger" in this transaction.

No assignment of interest to appellant having ever been approved, the responsibility for making rental payments remained entirely with the lessees of record. While it appears that the lessees of record

delegated this responsibility to Great Basins, they acted at their own peril in doing so. As we held in Leonard A. J. Tancredi, 32 IBLA 325 (1977), "the fact that appellant attempted to assign the lease * * * does not absolve him of paying rental timely, or of complying with the reinstatement requirements, until assignment of the lease is approved by BLM." Similarly, 30 U.S.C. § 187(a) (1976), relating to lease assignments, states that, "Until such approval however [*i.e.*, of a lease assignment], the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Thus it was incumbent upon the lessees of record either to make timely payment or to make certain that the rental was paid by appellant. Lynn Schusterman, 29 IBLA 182, 183 (1977); Clarence and Marguerite Zuspann, 18 IBLA 1, 3-4 (1974). By allowing appellant to assume the duty of making the rental payment while failing to inform appellant of the increased rental rate, the lessees were clearly negligent, and it was this omission which ultimately resulted in the cancellation of the subject lease.

In closing, we note that, while appellant has not specifically petitioned for reinstatement of the lease under 30 U.S.C. § 188(b) (1976), no petition for reinstatement was filed with BLM after receipt of the Notice of Termination as is required by 43 CFR 3108.2-1, and appellant's rights to reinstatement, if any such existed, must therefore be deemed waived. However, even if appellant had made such application, it could not be granted for two reasons; first because appellant has no cognizable interest in the lease, as the assignment was never approved and, second, because the rental was not paid or tendered within 20 days of the due date this Department has no authority under the statute to grant reinstatement. 30 U.S.C. § 188. Stanley J. Pirtle, 26 IBLA 348 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN PART:

The issues in this case are whether the lease terminated by operation of law and, if so, whether it can be reinstated. The answers to these issues are dictated by the words of the statute. Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b), provides for the automatic termination of a lease on which there is no well capable of producing oil or gas in paying quantities upon "failure of a lessee to pay rental on or before the anniversary date of the lease." The majority opinion has correctly pointed out that a further proviso in that section of the Act is not applicable here. I agree with that conclusion. There was no nominal deficiency in the rental, nor was there any error in the bill or decision which caused the deficient payment. The fact that the bill, or courtesy notice, was sent to the assignor rather than the assignee of the lease does not legally prevent the termination of the lease.

Appellant, the assignee of the lease, is seeking relief here, basically to have the lease reinstated, or otherwise to have it declared in good standing. As indicated, the lease has terminated, and there is no ground for deeming that it has not terminated in accordance with the express terms of the Mineral Leasing Act. The provision in 30 U.S.C. § 188(c) permitting reinstatement of a terminated oil and gas lease under certain conditions cannot be applied in this case. It expressly is limited to cases where the full rental was "paid on or tendered within twenty days" after the anniversary date of the lease. The anniversary date of this lease was October 1, and the remainder of the rental was not paid until November 23, 1977. Therefore, there is no authority to reinstate the lease. Whether the lessee's failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence is not relevant here because reinstatement would not be permissible even if there were an appropriate excuse.

The decision appealed from correctly did not mention that a petition for reinstatement could be filed. Thus, appellant's failure to file one with BLM is irrelevant. I disagree with the implication in the majority opinion that an assignee of an oil and gas lease would not have standing to file a petition for reinstatement in appropriate circumstances.

Joan B. Thompson
Administrative Judge

